

REMARKS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-26 and 29 are pending in the application. Claims 1-9, 11-15, 17, 18, 20-22, and 24-26 are amended; and Claim 29 is added by the present amendment. No new matter has been added.¹

In the Office Action, Claims 1, 3, 8, 14, 16, and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fradette (U.S. Patent No. 6,606,698 B2, hereinafter “the ‘698 patent”) in view of Kaneko et al. (U.S. Patent Application Publication No. 2003/0101272 A1, hereinafter “the ‘272 publication”) and Rodriguez et al. (Dynamic Parallel Access to Replicated Content in the Internet, 10 IEEE/ACM Transactions on Networking 455-465, Aug. 2002, hereinafter “Rodriguez”); Claims 2, 4, 6, 15, 17, and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the ‘698 patent in view of the ‘272 publication, Rodriguez, and Day (U.S. Patent No. 7,222,185 B1, hereinafter “the ‘185 patent”); Claims 5 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the ‘698 patent in view of the ‘272 publication, Rodriguez, the ‘185 patent, and Deshpande (U.S. Patent No. 7,191,246 B2, hereinafter “the ‘246 patent”); Claims 7 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the ‘698 patent in view of the ‘272 publication, Rodriguez, and Noma et al. (U.S. Patent Application Publication No. 2003/0055988 A1, hereinafter “the ‘988 publication”); Claims 9 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the ‘698 patent, the ‘272 publication, Rodriguez, and Fukunaga et al. (U.S. Patent No. 6,282,240 B1, hereinafter “the ‘240 patent”); Claims 11-13 and 24-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over

¹ The amendment to Claims 1, 4, 5, 14, 17, and 18 finds support at least in Figure 27 and its accompanying text in the specification. The amendment to Claims 5 and 18 finds further support at least in Claim 4. The amendment to Claims 11 and 24 finds support at least in the specification at page 72, lines 10-15. The amendment to Claim 13 finds support at least in Claim 11. The amendment to Claim 26 finds support at least in Claim 24.

the '185 patent in view of Gemmell (U.S. Patent No. 6,678,855 B1, hereinafter "the '855 patent"); and Claims 10 and 23 were indicated as being allowable if rewritten in independent form.

Applicant wishes to thank Primary Examiner Winder and Examiner Nickerson for the courtesy of an interview extended to Applicant's representatives on June 10, 2008. During the interview, amendments clarifying the claims over the applied references were discussed. As evidenced by the Interview Summary, it was agreed that amending Claim 1 to recite "a data transmission ratio between the . . . modes" would overcome the outstanding rejection. It was also agreed that the features recited in Claim 11 were not obvious in view of the applied references. Claim amendments and comments similar to those discussed during the interview are presented herein.

Applicant appreciatively acknowledges the indication of allowable subject matter. However, because amended independent Claims 1 and 14 are believed to overcome the applied references, Claims 10 and 23 are maintained in dependent form.

Independent Claims 1 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '698 patent in view of the '272 publication and Rodriguez. In response to this rejection, Applicant respectfully submits that amended Claims 1 and 14 recite novel features not taught or rendered obvious by the applied references.

Amended Claim 1 recites, in part, an information processing apparatus that includes "a data transmission setting unit configured to select one or more data transmission modes as a return data transmission mode, from a plurality of data transmission modes, and to determine a data transmission ratio between the selected one or more data transmission modes." Applicant has amended Claim 1 to clarify that the data transmission setting unit is configured to determine a data transmission ratio between one or more selected data transmission modes.

Turning to the applied references, the '698 patent is directed to a data storage managing apparatus having high capacity. The Office Action apparently acknowledges that the '698 patent does not disclose or suggest a data transmission rate setting unit configured to determine a data transmission rate of the selected one or more data transmission modes. Applicant accordingly submits that the '698 patent fails to disclose or suggest a data transmission setting unit configured to determine a data transmission ratio between one or more selected data transmission modes, as recited in amended Claim 1.

The Office relies on the '272 publication to provide a data transmission rate setting unit configured to determine a data transmission rate of the selected one or more data transmission modes. The '272 publication is directed to a distribution control program for making a plurality of data distribution reservations for one or more other devices at a specific device. The '272 publication describes a distribution system in which a transfer rate must be set for a piece of data.²

That is, the '272 publication merely discloses a data transfer rate. Applicant respectfully submits that the '272 publication is silent regarding a data transmission setting unit configured to determine a data transmission ratio between one or more selected data transmission modes, as recited in amended Claim 1.

Turning to Rodriguez, that reference is directed to a parallel-access scheme to download content from multiple servers at the same time. The Office Action apparently acknowledges that Rodriguez does not disclose or suggest a data transmission rate setting unit configured to determine a data transmission rate of the selected one or more data transmission modes. Applicant accordingly submits that Rodriguez fails to disclose or suggest a data transmission setting unit configured to determine a data transmission ratio between one or more selected data transmission modes, as recited in amended Claim 1.

² Paragraph [0005].

Thus, the '698 patent, the '272 publication, and Rodriguez, taken alone or in combination, fail to disclose or suggest a data transmission setting unit configured to determine a data transmission ratio between one or more selected data transmission modes, as recited in amended Claim 1. Applicant therefore submits that independent Claim 1 (and all associated dependent claims) patentably defines over any proper combination of the '698 patent, the '272 publication, and Rodriguez.

Further to the previous remarks, the Office has apparently acknowledged that the '698 patent does not disclose or suggest a data transmission rate setting unit configured to determine a data transmission rate of the selected one or more data transmission modes. Also, Applicant submits that the '272 publication merely describes a data transfer rate. Additionally, the Office Action apparently acknowledged that Rodriguez does not disclose or suggest a data transmission rate setting unit configured to determine a data transmission rate of the selected one or more data transmission modes.

Thus, Applicant submits that the '698 patent, the '272 publication, and Rodriguez, taken alone or in combination, fail to disclose or suggest determining a data transmission ratio between each of selected data transmission modes, as recited in amended Claim 14. Thus, Applicant further submits that independent Claim 14 (and all associated dependent claims) patentably defines over any proper combination of the '698 patent, the '272 publication, and Rodriguez.

Regarding the rejections of dependent Claims 2, 4-7, 9, 15, 17-20, and 22 over the '698 patent in view of the '272 publication, Rodriguez, and various combinations of the '185 patent, the '246 patent, the '988 publication, and the '240 patent, Applicant respectfully submits that the '185 patent, the '246 patent, the '988 publication, and the '240 patent do not remedy the above-noted deficiencies regarding the '698 patent, the '272 publication, and

Rodriguez. Thus, Applicant submits that the rejections of dependent Claims 2, 4-7, 9, 15, 17-20, and 22 are moot.

Independent Claims 11 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '185 patent in view of the '855 patent. Applicant respectfully submits that Claims 11 and 24 recite novel features not taught or rendered obvious by the applied references.

Amended Claim 11 recites, in part, an information processing apparatus that includes

a communication unit configured to receive from a network-connected node a demand level information acquisition request corresponding to at least one of the transmission data; and
a control unit configured
to count a number of demand level information acquisition requests corresponding to each of the transmission data, the demand level information acquisition requests having been received via the communication unit, . . . and
to transmit the response information to the network-connected node via the communication unit.

Applicant has amended Claim 11 to clarify that the control unit is configured to transmit the response information to the network-connected node from which the demand level information acquisition request was received by the communication unit.

Turning to the applied references, the '185 patent is directed to techniques for selecting a content distribution mode for content within a content distribution system. According to the '185 techniques, a counting facility tracks a type of content requested by a receiver and pools the content requests.³ The '185 counting facility then reports results to a system controller.⁴

That is, the '185 patent merely discloses that the results are reported to a device other than the receiver that requested the type of content. Applicant respectfully submits that the '185 patent fails to disclose or suggest a control unit configured to transmit response

³ Col. 8, l. 18-25.

⁴ Col. 8, l. 33-35.

information to a network-connected node from which a demand level information acquisition request was received, as recited in amended Claim 11.

Turning to the '855 patent, that reference is directed to the distribution of data files using IP multicast techniques in conjunction with data carousel techniques. The Office Action apparently acknowledges that the '855 patent does not disclose or suggest a control unit configured to transmit the response information, as previously recited in Claim 11.

Applicant respectfully submits that the '855 patent also fails to disclose or suggest a control unit configured to transmit response information to a network-connected node from which a demand level information acquisition request was received, as recited in amended Claim 11.

Applicant further submits that including a control unit configured to transmit response information to a network-connected node from which a demand level information acquisition request was received is not obvious, as agreed upon during the interview.

Thus, the '185 patent and the '855 patent, taken alone or in combination, fail to disclose or suggest a control unit configured to transmit response information to a network-connected node from which a demand level information acquisition request was received, as recited in amended Claim 11. Applicant therefore submits that independent Claim 11 (and all associated dependent claims) patentably defines over any proper combination of the '185 patent and the '855 patent.

As discussed above, the '185 patent merely describes reporting results to a device other than a receiver that requested a type of content. Further, the Office has apparently acknowledged that the '855 patent is silent regarding a control unit configured to transmit the response information, as previously recited in Claim 11.

Thus, Applicant submits that the '185 patent and the '855 patent, taken alone or in combination, fail to disclose or suggest transmitting a packet to a network-connected node, as recited in amended Claim 24. It is submitted that independent Claim 24 (and all associated

dependent claims) patentably defines over any proper combination of the '185 patent and the '855 patent.

New Claim 29 has been added to set forth the claimed invention in a varying scope. Applicant respectfully submits that the new claim finds support at least in the specification at page 72, lines 10-15. No new matter has been added. Accordingly, it is respectfully submitted that dependent Claim 29 is allowable for the same reasons as discussed above with regard to Claim 11, from which Claim 29 depends, and for the more detailed features presented by the new claim. Indeed, Applicant respectfully submits that dependent Claim 29 patentably defines over any proper combination of the '185 patent and the '855 patent, as indicated in the Interview Summary.

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted that the invention defined by Claims 1-26 and 29 patentably defines over the applied references. The present application is therefore believed to be in condition for formal allowance. An early and favorable reconsideration of the application is respectfully requested.

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